# CHAPTER 2: GENERAL PROGRAM RULES

The HOME program has a number of basic rules that apply to all program activities. These rules concern:

- The definition of a project;
- The form and amount of subsidy;
- Eligible costs;
- The property;
- The applicant or beneficiary;
- The long-term affordability of the project; and
- Applicability of other federal requirements.

This chapter provides an overview of these basic rules. For specific rules related to each program activity, see Chapters 4, 5, 6 and 7.

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## DEFINITION OF A PROJECT

- **Project** means a site or sites together with any building (including manufactured housing unit) or buildings located on the site(s) under common ownership, management and financing, to be assisted with HOME funds as a single undertaking. The "project" includes all of the activities associated with the site and building. For ***tenant-based rental assistance (TBRA)***, "project" means assistance to one or more families.

## THE SUBSIDY

### Eligible Forms of Subsidy

- HOME allows virtually any form of financial assistance, or subsidy, to be provided for eligible projects and to eligible beneficiaries.

- The participating jurisdiction (PJ) decides what forms of assistance it will provide. Some forms of assistance will require legal instruments to implement.

- The HOME regulation lists the following forms of subsidy as eligible:

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- <u>Interest bearing loans or advances</u>**:** These loans are amortizing loans. Repayment is expected on a regular basis, usually monthly, so that over a fixed period of time, all of the principal and interest is repaid.
  - ✓ Such loans may have interest rates at or below the prevailing market rate. Often, very low interest rates (i.e., one to three percent) can make monthly payments affordable to the borrower.
  - ✓ The property or some other assets are used as collateral.
  - ✓ The term of the loan may vary. For home purchase, a term of up to 30 years is common while rehabilitation and construction loans tend to have terms of 10 to 15 years.
- <u>Non-interest-bearing loans or advances</u>**:** The principal amount of such loans are paid back on a regular basis over time, but no interest is charged.
  - ✓ As with interest-bearing loans, these loans will use the property or other assets as collateral and the term of the loan will vary depending on the nature of the activity funded.
  - ✓ Such loans are made when the borrower is able to make regular payments but even a small amount of interest is not affordable.
- <u>Deferred loans (forgivable or repayable)</u>: These loans are not fully amortized. Instead, some, or even all, principal and interest payments are deferred to some point in the future. Deferred loans can be structured in many different ways.
  - ✓ Deferred payment loans can be forgivable or repayable.
    - If forgivable, the forgiveness might be structured to occur at one point in time (such as at the end of the affordability period), or forgiven incrementally (such as forgiving one-fifth of the loan each year over five years).
    - If repayable, repayment might be required at the sale or transfer of the property or at the end of a fixed period of time.

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- ✓ Like the amortizing loans discussed above, these loans can accrue interest or be non-interest bearing.
- ✓ Deferred payment loans require the property or some other form of collateral to be used as security for repayments.
- ✓ Deferred payment loans are also referred to as "soft seconds." They are increasingly being used to leverage private first mortgage financing in homeownership. They may also be used to help rental projects by allowing deferral of loan payments for the first few years until the project becomes stable.

➢ Grants**:** Grants are provided with no requirement or expectation of repayment.

- ✓ Grants require no liens on the property or other assets.
- ✓ They are most commonly used for downpayment and closing cost assistance in homebuyer programs or to provide assistance to very low-income owner-occupants for rehabilitation.

➢ Interest subsidies**:** This is usually an up-front discounted payment to a private lender in exchange for a lower interest rate on a loan. An interest subsidy may also be a deposit in an interest-bearing account from which monthly subsidies are drawn and paid to a lender along with the homeowner's monthly payment.

➢ Equity investments**:** An equity investment is an investment made in return for a share of ownership. Under this form of subsidy, the PJ acquires a financial stake in the assisted property and is paid a monetary return on the investment if money is left after expenses and loans are paid.

➢ Loan guarantees and loan guarantee accounts**:** HOME funds may be pledged to guarantee loans or to capitalize a loan guarantee account. A loan guarantee or loan guarantee account ensures payment of a loan in case of default.

- ✓ A loan guarantee is a written promise to pay the lender some percentage of the outstanding principal balance of a loan in the event the borrower defaults. It may be held for a specified period of time or reduced by a specific amount over time as the loan principal is repaid.

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- ✓ A loan guarantee account is a loan loss reserve held by the lender in an amount equal to some percentage of the outstanding principal.
  - The lender holding the loan guarantee account may require a minimum balance, as well as a percentage of the principal amount of the loan. The percentage of the loan amount held as guarantee may vary from loan to loan, or from program to program.
  - HOME rules require that the amount of money in a loan guarantee account must be based on a reasonable estimate of the default rate on the guaranteed loans, and may not exceed 20 percent of the total outstanding principal guaranteed, except that the account may include a reasonable minimum balance.

- ➢ Other forms approved by HUD: Other forms of assistance require HUD approval. If the PJ intends to use a form of assistance not listed above, the PJ's Consolidated Plan or Action Plan should describe the proposed form of assistance. Once approved by HUD as part of the Plan, no other HUD approval is required.

## Subsidy Limits

- ♦ **Minimum HOME investment**: The minimum amount of HOME funds is an average of $1,000, multiplied by the number of HOME-assisted units in the project.
  - ➢ The minimum ***only*** relates to the HOME funds, and ***not*** to any other funds that might be used for project costs.
  - ➢ The minimum HOME investment does not apply to TBRA.
- ♦ **Maximum HOME investment**: The maximum per-unit HOME subsidy limit varies by PJ. HUD determines the maximum amounts, which are based on the PJ's Section 221(d)(3) program limits for the metropolitan area, each year. An economist in a local HUD field office can provide these limits.
- ♦ The maximum per-unit subsidy limit is:
  - ➢ 100 percent of the dollar limits for a Section 221(d)(3) nonprofit sponsor, elevator-type development, indexed for

> Computing a Project's Per-Unit Subsidy
>
> When computing the HOME subsidy per unit, it is not necessary to include HOME-funded TBRA associated with the project.

base city high cost areas, and adjusted for the number of bedrooms.

- For some PJs, the 221(d)(3) limit has already been increased to 210 percent of the base limit. For these PJs, HUD will allow, ***upon request***, an increase in the per-unit subsidy amount on a program-wide basis. However, the absolute maximum subsidy limit that HUD will allow is 240 percent of the base 221(d)(3) limits.

# ELIGIBLE COSTS

Eligible costs depend on the nature of the program activity. The individual program chapters (Chapters 4 through 7) provide specific lists of eligible costs. A general list follows.

- **New construction**: HOME funds may be used for new construction of both rental and ownership housing. Any project that includes the addition of dwelling units outside the existing walls of a structure is considered new construction.
- **Rehabilitation**: This includes the alteration, improvement or modification of an existing structure. It also includes moving an existing structure to a foundation constructed with HOME funds. Rehabilitation may include adding rooms outside the existing walls of a structure, but adding a housing unit is considered new construction.
- **Reconstruction**: This refers to rebuilding a structure on the same lot where housing is standing at the time of project commitment. HOME funds may be used to build a new foundation or repair an existing foundation. Reconstruction also includes replacing a substandard manufactured house with a new manufactured house. During reconstruction, the number of rooms per unit may change, but the number of units may not. NOTE: Replacing a manufactured housing unit with a stick-built unit is considered a homebuyer activity even if the

**Reconstruction & Environmental Review**

Reconstruction may take place anywhere on the lot; however, reconstruction of a single family unit in a new location on the lot is classified as new construction for purposes of environmental review. Reconstruction of multi-family is viewed as new construction for the purposes of environmental review if the number of units is increased or decreased by more than 20% and/or the cost of reconstruction is more than 75% of the total estimated cost of the replacement after the work is completed. Refer to 24 CFR Part 58 for more information.

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applicant/beneficiary owns the lot and existing manufactured unit.

- **Conversion**: Conversion of an existing structure from another use to affordable residential housing is usually classified as rehabilitation. If conversion involves additional units beyond the walls (envelope) of an existing structure, the entire project will be deemed new construction. Conversion of a structure to commercial use is prohibited.
- **Site improvements**: Site improvements must be in keeping with improvements to surrounding standard projects. They include new, on-site improvements (sidewalks, utility connections, sewer and water lines, etc.) where none are

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present. They are essential to development or repair of existing improvements. Building new, off-site utility connections to an adjacent street is also eligible. Off-site infrastructure is not eligible as a HOME expense, but may be eligible for match credit.

*Example: Infrastructure, such as sewer and water lines in a public street in front of a HOME-assisted property, cannot be paid for with HOME funds. However, the connections that run from the HOME-assisted property to the street are eligible HOME costs since they are essential to the property.*

- **Acquisition of property**: Acquisition of existing standard property, or substandard property in need of rehabilitation, is eligible as part of either a homebuyer program or a rental housing project. After acquisition, rental units must meet HOME rental occupancy, affordability and lease requirements.

- **Acquisition of vacant land**: HOME funds may be used for acquisition of vacant land ***only*** if construction will begin on a HOME project within 12 months of purchase. Land banking is prohibited.

- **Demolition**: Demolition of an existing structure may be funded through HOME ***only*** if construction will begin on the HOME project within 12 months.

- **Relocation costs**: The Uniform Relocation Act and Section 104(d) (also known as the Barney Frank Amendments; see the appendix for detailed information on these requirements) apply to all HOME-assisted properties. Both permanent and temporary relocation assistance are eligible costs. Staff and overhead costs associated with relocation assistance are also eligible.

- **Refinancing**: HOME funds may be used to refinance existing debt on single-family, owner-occupied properties in connection with HOME-funded rehabilitation. The refinancing must be necessary to reduce the owner's overall housing costs and make the housing more affordable. Refinancing for the purpose of taking out equity is not permitted. HOME may also be used to refinance existing debt on multi-family projects being rehabilitated with HOME funds, if refinancing is necessary to permit or continue long-term affordability, and is consistent with PJ-established refinancing guidelines.

- **Capitalization of project reserves**: HOME funds may be used to fund an initial operating deficit reserve for new construction and rehabilitation projects for the initial rent-up period. The reserve may be used to pay for project operating expenses, scheduled payments to a replacement reserve and debt service for a period of up to 18 months.

- **Project-related soft costs**: These must be reasonable and necessary. Examples of eligible project soft costs include:
  - Finance-related costs;
  - Architectural, engineering and related professional services;
  - Tenant and homebuyer counseling, provided the recipient of counseling ultimately becomes the tenant or owner of a HOME-assisted unit;
  - Project audit costs;
  - Affirmative marketing and fair housing services to prospective tenants or owners of an assisted project; and
  - PJ staff costs directly related to projects (not including TBRA).

  See Chapter 8 for more information on project-related soft costs.

## Prohibited Activities

- **Project reserve accounts**: HOME funds may not be used to provide project reserve accounts (except for initial operating deficit reserves) or to pay for operating subsidies.

- **Tenant-based rental assistance for certain purposes**: HOME funds may not be used as rental assistance in conjunction with the federal Rental Rehabilitation Program (Section 17) to prevent displacements. They also may not be used for certain mandated existing Section 8 Program uses, such as Section 8 rent subsidies for troubled HUD-insured projects.

- **Match for other programs**: HOME Program funds may not be used as the "nonfederal" match for other federal programs ***except*** to match McKinney Act funds (see Chapter 9: Match).

- **Development, operations or modernization of public housing**: HOME Program monies may not be used to provide assistance authorized under section 9 of the 1937 Act (Public Housing Capital and Operating Funds).

- **Properties receiving assistance under 24 CFR Part 248 (Prepayment of Low-Income Housing Mortgages)**: Properties receiving assistance

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through the Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA) or the Emergency Low Income Preservation Act (ELIHPA) are not eligible for HOME assistance except if the HOME assistance is provided to ***priority purchasers***. These programs are no longer funded.

- **Double-dipping**: During the first year after project completion, the PJ may commit additional funds to a project. After the first year, no additional HOME funds may be provided to a HOME-assisted project during the relevant period of affordability, ***except*** that:

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- Rental assistance to families may be renewed.
- Rental assistance may be provided to families that will occupy housing previously assisted with HOME funds.
- A homebuyer may be assisted with HOME funds to acquire a unit that was previously assisted with HOME funds.

♦ **Acquisition of PJ-owned property**:  A PJ ***may not*** use HOME Program funds to reimburse itself for property in its inventory or property purchased for another purpose.  However, in anticipation of a HOME project, a PJ may use HOME funds to:

- Acquire property.
- Reimburse itself for property acquired specifically for a HOME project with other funds.

♦ **Project-based rental assistance**:  HOME funds may not be used for rental assistance if receipt of the funds is tied to occupancy in a particular project.  Funds from another source, such as Section 8, may be used for this type of project-based assistance in a HOME-assisted unit.  Further, HOME funds may

be used for other eligible costs, such as rehabilitation, in units receiving project-based assistance from another source -- for example, Section 8 or state-funded project-based assistance.

♦ **Pay for delinquent taxes, fees or charges.**  HOME funds may not be used to pay delinquent taxes, fees or charges on properties to be assisted with HOME funds.

# THE PROPERTY

## Property Types

♦ Depending on the nature of the program activity, HOME rules specify the types of property that are eligible for funding.  See the individual program activity chapters for guidance.

♦ Public facilities are not eligible under HOME.  See CPD Notice 01-5 in the Appendix.

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## Property Value

- For owner-occupied and homebuyer properties, HOME limits the value or purchase price of the property. In short, the price or, in the case of rehabilitated properties, the value may not exceed 95 percent of the area median purchase price. See Chapter 4: Homeowner Rehabilitation Activities and Chapter 5: Homebuyer Activities for details.

## Property Standards

- HOME-funded properties must meet certain minimum property standards.
  - State and local standards: State and local codes and ordinances apply to any HOME-funded project regardless of whether the project involves acquisition, rehabilitation, or new construction.
  - Model codes: For ***rehabilitation or new construction*** projects where there are not state or local building codes, the PJ must enforce national model codes as listed in Exhibit 2-1.
  - Housing quality standards: For ***acquisition-only*** projects, if there are no state or local codes or standards, the PJ must enforce Section 8 Housing Quality Standards (HQS).
  - Rehabilitation standards: Each PJ must develop written rehabilitation standards to apply to all HOME-funded ***rehabilitation*** work. These standards are similar to work specifications, and generally describe the methods and materials to be used when performing rehabilitation activities.

**EXHIBIT 2-1**

**MINIMUM PROPERTY STANDARDS BY ACTIVITY TYPE**

| Activity | Minimum Property Standard to be Met |
|---|---|
| Tenant-based rental assistance | Section 8 HQS. |
| Acquisition of existing housing (no rehabilitation or construction) | Applicable state or local housing quality standards and code requirements.<br>If no local standards/codes apply, Section 8 HQS. |
| Rehabilitation of housing | Local written rehabilitation standards.<br>AND<br>State and local code requirements.<br>If no local codes apply, one of the following national model codes:<br>• Uniform Building Code (ICBO)<br>• National Building Code (BOCA)<br>• Standard Building Code (SBCCI)<br>OR<br>• Council of American Building Officials one- or two-family code (CABO) OR<br>• Minimum Property Standards* at 24 CFR 200.925 or 200.926 (FHA).<br>AND<br>Handicapped accessibility requirements, where applicable. |
| New construction of housing | State and local code requirements.<br>If no state and local codes apply, one of the following national model codes:<br>• Uniform Building Code (ICBO)<br>• National Building Code (BOCA)<br>• Standard Building Code (SBCCI)<br>OR<br>• Council of American Building Officials one- or two-family code (CABO) OR<br>• Minimum Property Standards* (FHA) at 24 CFR 200.925 (for multi-family) or 200.926 (for one- and two-unit dwellings).<br>AND<br>Model Energy Code.<br>AND<br>Handicapped accessibility requirements, where applicable.<br>New construction of rental housing must meet site and neighborhood standards at 24 CFR 893.6(b). |

*Note: PJs using MPS may rely on inspections performed by a qualified person.

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- Model Energy Code: ***New construction*** requires compliance with the Model Energy Code.

- Handicapped accessibility: In some cases, handicapped accessibility requirements apply. See the individual activity chapters (Chapters 4, 5, 6 and 7) for more information.

- Site and neighborhood standards: The site and neighborhood standards of 24 CFR 983.6(b) apply only to the ***new construction of rental housing***.

♦ The applicable standards vary by the type of activity. Exhibit 2-1 explains the minimum property standards that apply to each type of HOME activity.

♦ All ***new*** manufactured housing must meet the construction and safety standards of 24 CFR 3280. New manufactured housing must be installed according to state or local codes or the manufacturer's written instructions.

# THE APPLICANT/BENEFICIARY

♦ The HOME Program is designed to provide affordable housing to low-income and very-low-income families and individuals. Therefore, the program has rules about targeting program resources and establishing applicant eligibility.

## Program Targeting

♦ Each PJ must use 100 percent of its HOME funds to assist families with incomes below 80 percent of the area median income.

♦ **For rental housing or TBRA**: When HOME funds are used for rental housing or for TBRA, additional targeting requirements apply:

- For each annual HOME allocation, 90 percent of the occupants of HOME-assisted rental units and households assisted with HOME-funded TBRA must have incomes that are 60 percent or less of the area median.

- 20 percent of the units in ***each*** rental housing project containing ***five or more*** units must be occupied by tenant families with incomes at or below 50 percent of median income.

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- Owners must adopt written tenant selection policies and procedures.

- The specific provisions that relate to the uses of HOME funds for rental housing and TBRA are discussed in Chapter 6: Rental Housing Activities and Chapter 7: Tenant-Based Rental Assistance, respectively.

## Applicant Income Eligibility

- **Income eligibility**: Beneficiaries of HOME funds -- homebuyers, homeowners or tenants -- must be low-income or very-low-income. Their income eligibility is determined based on their annual income.

- **Annual income**: Annual income is the gross amount of income anticipated by all adults in a family during the 12 months following the effective date of the determination. NOTE: Annual income is sometimes referred to as gross income or annual (gross) income.

- **Calculating annual income**: To calculate annual (gross) income, the PJ may choose among three definitions of income, listed below.

  - **Section 8 (Part 5) annual (gross) income:** The HOME program has always used the Section 8/Part 5 definition of annual income. It is still an acceptable definition to use for funded activities.

  - **IRS adjusted gross income:** The final rule allows HOME participants to determine annual income by using the calculation for “adjusted gross income” outlined in the federal income tax IRS Form 1040. (Note: while the IRS calls this calculation “adjusted gross income,” it is considered “annual income” for the purposes of the HOME program. “Adjusted income” under the HOME program -- used only when calculating rents or TBRA -- requires taking annual income and adjusting it in accordance with Section 8 rules. See Chapter 6: Rental Housing Activities for a complete discussion.)

  - **Census long form annual income:** The final rule also allows HOME participants to determine annual income as defined for the Census long form for the most recent decennial Census.

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Note: The definitions listed above provide guidance on what items to include in annual income calculation (for example, wages, salaries, tips, etc.). They do not affect the method in which income is verified (discussed under "Income Verifications" below) or how income is adjusted when calculating rents or TBRA (See Chapter 6: Rental Housing Activities.)

- **Choosing a definition of income**: The final HOME rule provides new flexibility to PJs in determining how they calculate income eligibility. One reason for this change is to facilitate the combination of HOME funds with other types of funding. The PJ's choice of definition may depend on the other sources of funds in a project.
  - The Community Development Block Grant (CDBG) program allows the same three definitions of income; therefore, projects with both sources should use the same definition.
  - The Low Income Housing Tax Credit (LIHTC) program requires the use of the Section 8 definition; therefore, HOME/tax credit projects must use the Section 8 definition.

## Income Verifications

- **Initial Verification**: To determine if program applicants are income-eligible, PJs must verify their income using source documentation such as wage statements, interest statements, and unemployment compensation statements.
  - Income eligibility is based on anticipated income. When collecting income verification documentation, also consider any likely changes in income. For example, last year's tax return does not establish anticipated income; nor is it adequate source documentation.
  - Once an initial income verification is completed, the PJ is not required to re-examine the applicants income unless six months has elapsed before assistance is provided.
- **Annual Re-examinations**: For rental and TBRA programs, annual recertifications of income are required. Income must be verified with source documentation every six years. (See Chapter 6: Rental Housing Activities for a full discussion.)

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For TBRA programs, both initial and subsequent income verifications must be based on an examination of source documentation.

# LONG-TERM AFFORDABILITY

- To ensure that HOME investments yield affordable housing over the long term, HOME imposes rent and occupancy requirements over the length of an affordability period.

## Affordability Periods

- For homebuyer and rental projects, the length of the affordability period depends on the amount of the HOME investment in the property and the nature of the activity funded. The table below provides the affordability periods.

| HOME Investment per Unit | Length of the Affordability Period |
|---|---|
| Less than $15,000 | 5 years |
| $15,000 - $40,000 | 10 years |
| More than $40,000 | 15 years |
| New construction of *rental* housing | 20 years |
| Refinancing of *rental* housing | 15 years |

- The Final Rule eliminated the requirement that when HOME funds are used in conjunction with Federal Housing Administration (FHA) insurance, the affordability period be the term of the FHA-insured mortgage.

## Occupancy

- Throughout the affordability period, the HOME-assisted housing must be occupied by income-eligible households.
  - **Rental housing**: When units become vacant during the affordability period, subsequent tenants must be income-eligible and must be charged the applicable HOME rent.
  - **Homebuyer assistance**: If a home purchased with HOME assistance is sold during the affordability period, resale or recapture provisions apply to ensure the continued provision of affordable homeownership. (See Chapter 5: Homebuyer Activities for more information.)

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## APPLICABILITY OF OTHER FEDERAL REQUIREMENTS

- HOME is subject to a number of cross-cutting Federal regulations, which are detailed in Chapter 10 and highlighted as applicable in the chapters covering homeowner rehabilitation, homebuyer and rental housing activities.